Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 190251-1410

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office, facsimile number (571) 273-8300 on March 14, 2006

Signature: [signature]

Typed or printed name: Brooke French

Application Number	Filed
09/752,307	12/29/00

First Named Inventor: Knight

Art Unit	Examiner
2685	Tran, Pablo N.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 47,283
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

[signature]
Signature

Charles W. Griggers
Typed or printed name

(770) 933-9500
Telephone number

3-14-06
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [X] *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Knight	
Serial No.: 09/752,307	Group Art Unit: 2685
Filed: December 29, 2000	Examiner: Tran, Pablo N.
For: Wireless Communications Methods And Systems Using a Remote, Self-Contained Communications Antenna Unit	Docket No.: 190251-1410

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants submit the following remarks in support of a Request for a Pre-Appeal Brief Conference.

REMARKS

I. Rejection of Claims 1-29, 37, and 38

Claims 1-28, 37, and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Priest, et al* (U.S. Patent No. 6,047,106) in view of *Council, et al* (National Transportable Telecommunications Capability: Commercial Satellite and Cellular Comm. For Emergency Preparedness, vol. 1, conf. 11, pages 137-140). Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified system of *Priest, et al* in view of *Knoblach, et al* (U.S. Patent No. 6,628,941). Applicant traverses this rejection and respectfully submits that the rejection of record is clearly not proper.

Specifically, Applicant submits that the following clear legal deficiency exists in the rejection. Applicant respectfully submits that a claimed element, specifically among others, "transceiving communication signals between said equipment and a disconnected cell site that has been disconnected from its cellular system" is not taught by the references of record either singularly or in combination. The Office Action alleges that "Priest teaches that the deployable BS sample [sic] RF energy emanating from other fixed base stations (col. 5/ln. 10-13)."

Applicant challenges the Examiner's statement as clear error. Applicant respectfully submits that sampling RF energy emanating from other fixed base stations is **not** communicating with a cell site that has been disconnected from its cellular system. Moreover, this statement seems to have been read out of context. The pertinent section reads:

> The receiving section 140 includes a low power PA (power amplifier) and additional receiver attenuation incorporated within the section denoted schematically as PAD 142. This allows the deployable base station to sample the RF energy emanating from other base stations (either fixed or mobile). This information, in turn, allows the deployable base station to choose a control channel to communicate with portable stations without interfering with pre-existing nearby base stations (either fixed or mobile)."

Priest, col. 5, lines 8-17.

The purpose of the sampling is not to communicate with the pre-existing base station (e.g., one that has been disconnected from its cellular system), but to choose a control channel such that it does **not** interfere or communicate with pre-existing base stations. *Priest* clearly teaches away from the subject matter of the claims. Neither *Council* nor *Knoblauch* makes up for the deficiency in *Priest*. Therefore, since all elements of the claims are not disclosed, taught, or suggested by the references of record, the rejection is improper and should be withdrawn.

The Office Action further takes Official Notice that some features in the claims are well-known in the art. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." If Applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. Applicant submits that the exmainer's assertion was adequately traversed. In turn, Examiner submitted three separate patents as documentary evidence that the features are well-known.

Applicant respectfully submits that a singular patent is not sufficient evidence in and of itself to support a conclusion that a feature is well-known. Instead, Applicant submits that the fact that the feature was considered patentable by the U.S.P.T.O is evidence that the feature is **not** well-known. In fact, if the mere presence of a feature in a patent leads to the conclusion that the feature is well-known, a claim would almost never be found to be allowable. Applicant further asserts that proper patent examining procedure would use the cited references in a rejection under 35 U.S.C. §103 should one be deemed warranted. As the cited features have not been shown capable of such instant and unquestionable demonstration as to deny dispute, the finding that the features are "well-known" is improper and the claims should be allowed.

CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-22 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.

By: _____
Charles W. Griggers, Reg. No. 47,283

100 Galleria Parkway, NW
Suite 1750
Atlanta, Georgia 30339-5948
Tel: (770) 933-9500
Fax: (770) 951-0933

Customer Number: 38823